

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Clinton Community School District Clinton County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-WW-01
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TO: James Tuisl, President
1543 12th Ave N
Clinton, IA 52732

Landmark Engineering Group, Inc.
Michael Shamsie Registered Agent
511 S 4th Street
Clinton, IA 52732

I. SUMMARY

This administrative consent order (order) is entered into between Clinton Community School District (CCSD) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order for the purpose of resolving violations of CCSD National Pollution Discharge Elimination System General Permit No. 2. (NPDES permit). CCSD hereby agrees to comply with the conditions of its NPDES permit including the maintenance and implementation of its storm water pollution prevention plan (SWPPP), and payment of an administrative penalty of \$3,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Russell Royce, Environmental Specialist
IDNR Field Office #2
P.O. Box 1443, 2300 15th St. S.W.
Mason City, Iowa 50402-1443
Ph: 641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. CCSD is constructing North End Elementary School which is located at 1348 Main Street Clinton, Iowa (1348 Main Street). The legal description for this property is the SW ¼ of Section 30, T82N, R7E, Clinton County, Iowa. Authorization under an NPDES permit was obtained from the Department on October 6, 2005, the authorization number is: IA-10311-10104. This permit lists Landmark Engineering Group as the contact.

2. On April 21, 2006, the Department received a complaint forwarded from Clinton County Natural Resources Conservation Services alleging that sediment from the building of a new school along highway 136 at the Mill Creek bypass was washing into the creek.

3. On May 1, 2006, the Department received a complaint alleging that mud was running off the site of a school being built by the CCSD onto private property and streets around the construction site.

4. On May 5, 2006, the Department investigated 1348 Main Street. During this investigation, it was noted that numerous control devices had failed and that rill and gully erosion were prevalent. Large scale off-site impact was also observed including silt entering a creek as well as evidence that silt had covered the majority of 26th Avenue North.

5. On May 11, 2006, a Notice of Violation was sent to Landmark Engineering Group for failure to comply with the conditions of CCSD's NPDES permit, CCSD also received a copy of this letter. This NOV required that by May 19, 2006, the following be complied with: (1) perform maintenance on all best management practices (BMPs); (2) alter the SWPPP by adding more or different BMPs to ensure no off-site impact; (3) by the fourteenth day, make certain that initial stabilization has occurred or will occur of any areas that will be dormant for at least 21 days.

6. On August 11, 2006, Jim Sievers, Department Environmental Specialist Senior, sent Ryan Schertz, the contractor in charge of the site, and CCSD a letter discussing the follow up visit which he conducted on August 7, 2006. This letter set out that while on

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site, Mr. Sievers reviewed the storm water control inspection records and concluded that CCSD appeared to comply with the record keeping requirements. Mr. Sievers also inspected the sediment control basins and the silt fence and recommended that the sediment in the southeast basin be removed and that several silt fence devices located along the entrance road be cleaned out. Mr. Sievers observed the previous off-site sediment deposits located on private property adjacent to the southeast corner of the construction site. Mr. Schertz stated that the sediment had been deposited there after heavy rains in April and May. Mr. Schertz also stated that he had developed a plan, which was given to Mr. Sievers at the inspection, to remediate the area by re-grading, adding top soil and seeding. However, Mr. Schertz stated that the private property owner would not allow him on the property to perform this work. Mr. Sievers observed that some of this sediment on this private property had recently been washed onto 25th Avenue North after a rainfall event. Mr. Sievers informed Mr. Schertz that every effort must be made to gain access to this location and remove the sediment.

7. On March 23, 2007, the Department received a complaint alleging that due to construction at 1348 Main Street, the complainant and neighbors experienced sedimentation and erosion on their adjoining properties. The complainant stated that he had previously contacted both the City of Clinton and CCSD about the problem.

8. On July 13, 2007, the Department sent an NOV to CCSD for violations documented during three inspections of 1348 Main Street, which took place on March 28, 2007, May 14, 2007 and May 22, 2007. During these inspections, the following NPDES permit violations were documented:

1. The sedimentation basin located on the south east corner of the property had discharged silt and the outfall was un-protected;
2. The silt fence on the south perimeter was not being maintained;
3. The silt fence on the south entrance was not being maintained and it appeared that there was continued impact to the creek;
4. The sedimentation basin located on the NW corner of the property had discharged silt and the outfall was un-protected;
5. The site map had not been updated as BMPs changed;
6. The narrative SWPPP had not been updated;
7. The SWPPP did not identify all potential sources of pollution. For instance, the following were not included: port-a-potties, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents etc.;
8. The SWPPP did not identify all operators for the project site and the areas of the site over which each operator has control;
9. The following dates were not recorded: when major grading activities occurred, when construction temporarily or permanently ceased and when stabilization measures were initiated;
10. The SWPPP did not identify/ensure description of construction implementation of pollution prevention measures for non-storm water discharges; and
11. A copy of CCSD's NPDES permit and the May 11, 2006, NOV was not in the SWPPP.

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This NOV noted that at the time it was written it appeared that numbers 1, 4 and 5, in the above list, had been corrected. However items 2, 3, and 6-11, in the above list, needed to be addressed by updating the SWPPP and implementing BMPs. The Department required that this be completed by July 27, 2007.

9. On July 27, 2007, in response to the NOV, the Department received a letter from Robert Shipman, the project manager for CCSD. This letter informed the Department of how CCSD intended to comply with the July 13, 2007, NOV.

IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted federal regulations pertaining to the issuance of an NPDES permit for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to 567 IAC 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Category no. 10 under this definition covers "construction activity" that includes clearing, grading and excavation activities except operations that result in the disturbances of less than 1 acre of total land area which are not part of a larger common plan of development or sale.

2. 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above stated facts show noncompliance with this provision.

3. NPDES permit, Part IV, provides that the permittee must develop and implement a SWPPP in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days. The above stated facts show noncompliance with this provision.

4. NPDES permit, Part VI (E), requires the permittee to furnish any information requested by the Department to determine compliance or any records required to be kept, within a reasonable time. The above stated facts show noncompliance with this provision.

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V. ORDER

THEREFORE, the Department orders and CCSD agrees to do the following:

1. CCSD shall comply with conditions required under its NPDES permit, which include maintaining and proper implementation of the SWPPP; and
2. Pay a penalty of \$3,000 within 30 days of the Director of the Department signing this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations and deterring this party and others from violating storm water permit requirements, is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** CCSD saved money by not employing an erosion control contractor and saved time by not learning how to use erosion control devices properly. Therefore, \$1,000.00 is assessed for this factor.

b. **Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute in this case. The Department has determined that the most effective and efficient means of addressing the above cited violations is with administrative penalties, which are lower than those that could be obtained through court action.

Sedimentation of Iowa's waterways is a serious problem, and the regulatory agencies have recognized that uncontrolled runoff from construction sites is a significant contributor to these problems. It is not necessary to document a specific water quality impact from a specific site. The storm water permit program requires that BMPs be implemented at all regulated sites. Where construction is conducted without maintenance of the necessary controls, it threatens the integrity of the program and thwarts achievement of state-wide water quality goals. For these reasons, \$1,000.00 is assessed for this factor.

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c. **Culpability.** CCSD was notified in 2006 of its failure to comply with its NPDES permit. Nevertheless, the same problems persisted in 2007. Therefore, \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of CCSD. By signature to this order, all rights to appeal this order are waived by CCSD.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



JAMES TUISL, PRESIDENT OF THE SCHOOL BOARD
CLINTON COMMUNITY SCHOOL DISTRICT

Dated this _____ day of _____, 2007



RICHARD LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of Jan., 2008

Field Office No. 6, Carrie Schoenebaum, Russell Royce, I.C.7.b.